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DATE FILED: 6/30/11

Purley, J

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

APOLINAR AMARO HERNANDEZ and VALENTIN GONZALEZ SANTOS, individually and on behalf of all other persons similarly situated who were employed by LANSKY'S EQUITIES CORPORATION d/b/a LANSKY'S OLD WORLD DELI and/or 185 COLUMBUS EQUITY CORP. d/b/a JALAPEÑO and/or SUSHI A GO GO, INC and/or DAVID RUGGIERO and/or THERESA GARELLI,

Plaintiffs,  
- against -

LANSKY'S EQUITIES CORPORATION d/b/a LANSKY'S OLD WORLD DELI, and/or 185 COLUMBUS EQUITY CORP. d/b/a JALAPEÑO and SUSHI A GO GO, INC and/or any other entities affiliated with, controlling, or controlled by LANSKY'S EQUITIES CORPORATION and/or 185 COLUMBUS EQUITY CORP. and/or SUSHI A GO GO, INC. and DAVID RUGGERIO and THERESA GARELLI,

Defendants

Docket No.: 10-CV-9495  
(WHP)

PUBLICATION  
ORDER

WHEREAS, the Plaintiffs and putative class of individuals having made an application to implement a court-supervised notification to the putative class members under 29 U.S.C. § 216(b), and

WHEREAS the Court having read and considered the proposed Notice of Lawsuit and Consent to Joinder form; and

WHEREAS the Court finding that there exists substantial and sufficient grounds for entering this Order;

IT IS HEREBY ORDERED that:

1. On or before forty-five (45) days after entry of this Order, the Plaintiffs or their designated representatives shall cause a copy of the Notice of Lawsuit and Consent to Joinder Form to be mailed by first class mail to:

The Plaintiffs and all current and former employees of LANSKY'S EQUITIES CORPORATION d/b/a LANSKY'S OLD WORLD DELI ("Lansky's), and/or 185 COLUMBUS EQUITY CORP. d/b/a JALAPEÑO ("Jalapeño") and SUSHI A GO GO, INC ("Sushi a Go Go") and/or any other entities affiliated with, controlling, or controlled by LANSKY'S EQUITIES CORPORATION and/or 185 COLUMBUS EQUITY CORP. and/or SUSHI A GO GO, INC. and DAVID RUGGERIO and THERESA GARELLI (collectively "Defendants") who performed work as servers, bussers, dishwashers, food preparers, cooks, or delivery personnel, at Defendants' restaurants located New York City's upper west side from July 1, 2008 through the present. Corporate officers, shareholders, directors, administrative employees, and other customarily exempt employees are not part of the defined class.

2. The Court approves the form of Notice of Lawsuit and Consent to Joinder, and finds that the mailing of such Notice substantially in the manner and form set forth in paragraph 1 of this Order will constitute the best notice practicable under the circumstances to members of the Class. Within thirty (30) days after entry of this Order, Defendants shall furnish to Plaintiffs' counsel and if applicable, the designated notice administrator, a list containing the names and last known address of all servers, bussers, dishwashers, food preparers, cooks, or delivery personnel employed by Defendants July 1, 2008 through the present. This mailing list is to be furnished in electronic form and shall be treated by the Parties as confidential.

3. The Notice of Lawsuit and Consent to Joinder shall be published in English, Spanish, and Chinese. Plaintiffs' counsel shall file with the Clerk of the Court a certification from the Spanish and Chinese interpreter retained to translate the Notice of Lawsuit and Consent to Joinder.

4. Consent to Joinder must be filed 90 days after the mailing of the Notice.

5. Should a significant number of notices be returned as undeliverable with no forwarding address, Plaintiffs reserve the right to apply to the Court for permission to cause a copy of this Notice, substantially in the same form attached hereto, to be posted at the subject

restaurants and/or to be published in a Spanish-language or Chinese-language newspaper that is circulated daily in New York (newspaper publication).

SO ORDERED.

  
Hon. William Pauley III

Dated: New York, New York  
June 30 2011



**TO BE CIRCULATED IN ENGLISH, SPANISH AND CHINESE**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

**APOLINAR AMARO HERNANDEZ and VALENTIN GONZALEZ SANTOS, individually and on behalf of all other persons similarly situated who were employed by LANSKY'S EQUITIES CORPORATION d/b/a LANSKY'S OLD WORLD DELI and/or 185 COLUMBUS EQUITY CORP. d/b/a JALAPEÑO and/or SUSHI A GO GO, INC and/or DAVID RUGGIERO and/or THERESA GARELLI,**

Plaintiffs,

- against -

**LANSKY'S EQUITIES CORPORATION d/b/a LANSKY'S OLD WORLD DELI, and/or 185 COLUMBUS EQUITY CORP. d/b/a JALAPEÑO and SUSHI A GO GO, INC and/or any other entities affiliated with, controlling, or controlled by LANSKY'S EQUITIES CORPORATION and/or 185 COLUMBUS EQUITY CORP. and/or SUSHI A GO GO, INC, and DAVID RUGGERIO and THERESA GARELLI,**

Defendants

10-CV-9495 (WHP)

**NOTICE OF WAGE & HOUR LAWSUIT**

**IMPORTANT NOTICE  
ADVISING YOU OF YOUR  
LEGAL RIGHTS**

**TO:** The Plaintiffs and all current and former employees of LANSKY'S EQUITIES CORPORATION d/b/a LANSKY'S OLD WORLD DELI ("Lansky's"), and/or 185 COLUMBUS EQUITY CORP. d/b/a JALAPEÑO ("Jalapeño") and SUSHI A GO GO, INC ("Sushi a Go Go") and/or any other entities affiliated with, controlling, or controlled by LANSKY'S EQUITIES CORPORATION and/or 185 COLUMBUS EQUITY CORP. and/or SUSHI A GO GO, INC. and DAVID RUGGERIO and THERESA GARELLI (collectively "Defendants") who performed work as servers, bussers, dishwashers, food preparers, cooks, or delivery personnel, at Defendants' restaurants located New York City's upper west side from June 15, 2008 through the present. Corporate officers, shareholders, directors, administrative employees, and other customarily exempt employees are not part of the defined class.

If you worked for Defendants Lansky's, Sushi a Go Go, or Jalapeno at any time since June 15, 2008, the purpose of this Notice is to advise you of this lawsuit, and to further advise you of certain rights you may have with respect to this action.

Plaintiffs APOLINAR AMARO HERNANDEZ and VALENTIN GONZALEZ SANTOS are former employees of Defendants who have brought this action on behalf of all other current and former Lansky's and/or Jalapeño, and/or Sushi a Go Go employees to recover unpaid minimum wages, overtime compensation (for all hours worked in excess of 40 per week), and spread of hours compensation, for which they claim to have been incorrectly paid.

This lawsuit seeks the payment of minimum wages, overtime wages, and spread of hours compensation, pursuant to the Fair Labor Standards Act (29 U.S.C. 201 *et seq.*) and New York State Labor Law, allegedly owed to current and former employees of Lansky's and/or Jalapeño, and/or Sushi a Go Go who worked as servers, bussers, dishwashers, food preparers, cooks or delivery personnel.

You may be owed payment if you worked for Defendants and were not paid minimum wages and overtime compensation for all hours worked in excess of 40 each week. You may be owed payment if Defendants did not pay you an additional hour's pay at the basic minimum hourly wage rate when you worked more than ten (10) hours in a day and your total weekly compensation did not exceed the minimum wage and overtime due you plus one hour's pay for each day that spanned more than ten hours. Lastly, you may be owed payment if you worked for Defendants for more than forty (40) hours per week and you were not paid overtime at time and one-half (1.5x) your regular hourly rate of pay for all hours actually worked over forty (40) hours each week.

Defendants vigorously deny any wrongdoing and/or liability to plaintiffs or any other past or present employee of Lansky's and/or Jalapeño, and/or Sushi a Go Go who may allege that he or she was underpaid. Defendants strongly deny that any employee was underpaid for his or her work at any time and believe that employees were properly paid a shift pay rate in excess of the federal minimum wage per hour for tipped employees and for non-tipped employees.

**This Notice is meant to advise you of your right to participate in this lawsuit as a claimant and plaintiff under the Fair Labor Standards Act if you believe that you were improperly paid by Lansky's and/or Jalapeño and/or Sushi a Go Go.**

**No determination has been made that you are owed any minimum wages, overtime wages or spread of hours, and the Court is not endorsing the merits of this lawsuit or advising you to participate in this lawsuit. You are under no obligation to respond to this notice.**

**Federal law prohibits Defendants from retaliating against you in any manner if you wish to join this lawsuit.**

\* \* \*

#### **FEDERAL LAW CLAIMS**

If you worked for Defendants between June 15, 2008 and the present, you may be entitled to certain protection under the Federal Fair Labor Standards Act for all hours that you received less than the minimum wage for all hours worked. You may be entitled to these protections even if you are an employee that received tips and did not receive the tipped minimum wage. You may also be entitled to certain protection under the Federal Fair Labor Standard Act for all work performed in excess of 40 hours each week when you may not have been paid one and one-half times (1.5x) your regular hourly wage rate.

If you wish to participate in this portion of the lawsuit, you must have the enclosed written "Consent to Join Lawsuit" Form filed with the Clerk of the Court. If you do not sign and mail the "Consent to Join Lawsuit" form to the address listed below or file it directly with the court, you will not be permitted to seek recovery of unpaid wages under the Fair Labor Standards Act in this case.

**NEW YORK LAW CLAIMS**

Under New York law, you may have claims for unpaid minimum wages, overtime compensation (work performed over 40 hours), and spread of hours compensation that date back to December 22, 2004. You will be advised of any additional rights that you may have to recover under New York law in the event that a class is certified by this Court. You do not need to participate in this portion of the lawsuit in order to recover under New York law.

**FILING THE CONSENT TO JOINDER FORM**

If you wish to participate in the portion of this lawsuit that seeks payment of unpaid minimum wages and overtime wages under the Fair Labor Standards Act, you can sign and return the enclosed yellow Consent to Joinder as directed below. Your consent to Join Lawsuit Form will be filed with the Clerk of the Court on your behalf. If your Consent to Joinder form is not filed with the Clerk of the Court you will not be eligible to participate in the FLSA portion of this lawsuit. Consent to Joinder forms filed after [90 DAYS FROM MAILING] will be rejected unless good cause is shown for the delay.

IF YOU WISH TO FILE A CLAIM FOR UNPAID MINIMUM WAGES AND UNPAID  
OVERTIME PAY UNDER THE FEDERAL FAIR LABOR STANDARDS ACT  
, YOU MUST MAIL THE ENCLOSED CONSENT TO JOINDER FORM POSTMARKED  
BY 90 DAYS FROM MAILING TO:

LLOYD AMBINDER, ESQ.  
VIRGINIA & AMBINDER, LLP  
111 BROADWAY, ROOM 1403  
NEW YORK, N.Y. 10006  
RE: LANSKY'S

If you fail to mail a signed Consent to Join Lawsuit form by [90 DAYS FROM DATE OF MAILING], you may not be eligible to participate in the FLSA portion of this lawsuit.

Lloyd Ambinder, Esq., of Virginia & Ambinder, LLP, located at 111 Broadway, Suite 1403, New York, New York 10006, telephone number (212) 943-9080, facsimile number (212) 943-9082 represents the Plaintiffs in this case. You will not be required to pay any fee for services provided by plaintiffs' counsel Virginia & Ambinder, LLP. If you are represented by Plaintiffs' attorneys, their costs and fees will be paid out of any recovery against Defendants. You have a right to consult with any other attorney about this matter. If you wish to be represented by other counsel, you may retain another attorney. Such representation may also be

without cost to you as their costs and fees may also be paid out of any recovery against Defendants. .

If you join this lawsuit, you may be required to provide information relating to your employment, including giving a deposition, or otherwise participate in certain discovery proceedings.

In addition, you may also file a complaint with the United States Department of Labor or with the New York State Department of Labor.

Further information about this Notice, the deadline for joining the lawsuit, the form provided or answers to other questions concerning this lawsuit may be obtained by contacting the Plaintiffs' attorney Lloyd Ambinder, Esq., telephone number (212) 943-9080, facsimile number (212) 943-9082. If you require Spanish translation, please ask for Leonor Coyle, Esq., Yeskenia Polanco, Christian Contreras; Polish translation, please ask for Maria Tokarz, Isabel Gardocki, or Iwona Ner.

*You have a right to participate in this action even if you are an undocumented alien  
or if you were paid in cash.*

PLEASE DO NOT CONTACT THE CLERK OF THE COURT WITH QUESTIONS  
INVOLVING THIS LAWSUIT.

Dated: New York, New York  
June \_\_\_\_, 2011

**TO BE CIRCULATED IN ENGLISH, SPANISH AND CHINESE**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

APOLINAR AMARO HERNANDEZ and VALENTIN GONZALEZ SANTOS, individually and on behalf of all other persons similarly situated who were employed by LANSKY'S EQUITIES CORPORATION d/b/a LANSKY'S OLD WORLD DELI and/or 185 COLUMBUS EQUITY CORP. d/b/a JALAPEÑO and/or SUSHI A GO GO, INC and/or DAVID RUGGIERO and/or THERESA GARELLI,

Plaintiffs,

- against -

LANSKY'S EQUITIES CORPORATION d/b/a LANSKY'S OLD WORLD DELI, and/or 185 COLUMBUS EQUITY CORP. d/b/a JALAPEÑO and SUSHI A GO GO, INC and/or any other entities affiliated with, controlling, or controlled by LANSKY'S EQUITIES CORPORATION and/or 185 COLUMBUS EQUITY CORP. and/or SUSHI A GO GO, INC. and DAVID RUGGERIO and THERESA GARELLI,

Defendants

10-CV-9495 (WHP)

**CONSENT TO JOINDER**

By signing below I, \_\_\_\_\_ (Print Name), consent to participate in this lawsuit.

Signature: \_\_\_\_\_ Print Name: \_\_\_\_\_

Address: \_\_\_\_\_

Zip Code: \_\_\_\_\_ Apt. \_\_\_\_\_ Phone Number: (\_\_\_\_) \_\_\_\_\_

E-mail: \_\_\_\_\_ @ \_\_\_\_\_

THE LAST DAY TO FILE THIS CONSENT TO JOINDER FORM IS \_\_\_\_\_

**CONSENT TO JOINDER FORMS FILED AFTER \_\_\_\_\_ WILL BE REJECTED  
UNLESS GOOD CAUSE IS SHOWN FOR THE DELAY**

IF YOU WISH TO SEEK RECOVERY UNDER THE  
FEDERAL FAIR LABOR STANDARDS ACT IN THIS CASE, YOU  
MUST MAIL THE ENCLOSED CONSENT TO JOINDER FORM  
POSTMARKED BY \_\_\_\_\_ 2011 TO:

LLOYD AMBINDER, ESQ.  
VIRGINIA & AMBINDER, LLP  
111 BROADWAY, ROOM 1403  
NEW YORK, N.Y. 10006  
RE: LANSKY'S

If you fail to mail a signed Consent to Joinder form by \_\_\_\_\_ 2011, you may not be  
eligible to participate in the FLSA portion of this lawsuit.



RECEIVED

JUN 27 2011

CHAMBERS OF  
WILLIAM H. PAULEY  
U.S.D.J.

USDC SDNY  
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Trinity Centre  
111 Broadway, Suite 1403  
New York, New York 10006  
Telephone: 212.943.9080  
www.vandallp.com

Lloyd R. Ambinder  
[lambinder@vandallp.com](mailto:lambinder@vandallp.com)

June 24, 2011

**HAND DELIVERY AND E-MAIL TO SDNY CLERK**

Honorable William H. Pauley III  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl Street  
New York, New York 10007

Re: *Apolinar Amaro Hernández et al. v. Lansky's Equities Corporation et al.*  
Docket No. 10-CV-9495 (WHP)

Dear Judge Pauley:

This firm is counsel to Plaintiffs in the above-referenced wage and hour action. I write on consent of Defendants' counsel, and in furtherance of your June 7, 2011 Order, to advise you that the parties have agreed to the substance, form and procedure for publishing an FLSA notice of pendency of collective action.

Enclosed please find the proposed Notice of Pendency ("Notice"), Consent to Join Form and Publication Order ("Order"). The terms of the proposed Publication Order would allow FLSA claimants 90 days from the date of mailing to opt-in to the this action.

Thank you.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Lambinder'.

Lloyd Ambinder

Enc.  
cc: Andrew Marks, Esq.(via ECF)